

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>JOHNSON COUNTY</b> Iowa City, Iowa	ADMINISTRATIVE CONSENT ORDER   NO. 2008-AQ-01
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TO: David Kempf  
Johnson County, Facilities Manager  
913 S. Dubuque Street  
Iowa City, Iowa 52240

**I. SUMMARY**

This administrative consent order is entered into between Johnson County and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESHAP) violations resulting from demolition of several businesses within city limits of Iowa City. The parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Marion Burnside  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8443

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess

*David Kempf*

*Anne Preziosi*

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administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. Johnson County condemned several small businesses and at least one residential dwelling that made up one square city block within city limits of Iowa City to prepare the site for construction of a new County Administration building. The block is enclosed by Lafayette Street (N), S. Clinton Street (W), S. Dubuque Street (E) and E. Benton Street (S). The buildings demolished in the city block were: Hawkeye Lumber Yard, a single family dwelling, an automotive dealership, Ya Ya's (a hair salon), RT's Bar & Grill, and a storage building. All buildings other than the single family residence were commercial and therefore subject to the Asbestos NESHAP.

2. On November 30, 2006, the DNR received an anonymous complaint regarding a potential asbestos release from the demolition of the commercial buildings.

3. On December 14, 2006, Kurt Levetzow, DNR Field Office 6, investigated the site of the complaint. Because the demolition work was completed at least two weeks prior to the investigation the site had been substantially cleaned-up. All equipment and waste had been removed and grading of the site had been completed. Mr. Levetzow contacted David Kempf, Johnson County Facilities Manager, to discuss the demolition. Mr. Kempf stated he was not aware of the NESHAP asbestos requirements, and therefore, no asbestos testing was conducted prior to the start of the demolition. Mr. Levetzow informed Mr. Kempf that DNR should have been notified prior to the demolition and explained the Asbestos NESHAP requirements.

4. On January 5, 2007, a Notice of Violation letter was sent to Mr. Kempf, in his capacity as Johnson County Facilities Manager. The letter explained that Johnson County was in violation of the Asbestos NESHAP requirements because it failed to notify DNR prior to the demolition of the commercial buildings, and it failed to perform the required inspection and sampling prior to demolition. Additionally, the letter stated that the matter would be referred to the Legal Services Bureau for further enforcement action.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

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2. 40 CFR section 61.145(b)"I" requires written notification of a demolition project be submitted to the DNR prior to beginning demolition. The specific requirements for this notification are contained in the subsection. Johnson County failed to submit a notification prior to the demolition of six main buildings within one city block. The above facts indicate a violation of this provision.

3. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. Johnson County failed to conduct a thorough inspection prior to commencement of the demolition. The above facts indicate a violation of this provision.

4. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. Because there was potential for any of the facilities to have asbestos containing material, the above facts indicate a violation of this provision.

5. 40 CFR 61.150(b)(1) requires that all asbestos containing waste material be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with 40 CFR 61.154 for active waste disposal sites. An asbestos approved waste disposal site was not used in this matter, therefore any asbestos containing waste from the demolition was not disposed of at an acceptable disposal site. The above facts indicate a violation of this provision.

**V. ORDER**

THHEREFORE, the DNR orders and Johnson County agrees to do the following:

1. Johnson County shall pay a penalty of \$7,400.00 within 60 days of the date from which the Director signs this administrative consent order.
2. All future demolition projects conducted by Johnson County must be in compliance with the Asbestos NESHAP if applicable.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

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2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$7,400.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal may have allowed Johnson County to save time and money. A certified asbestos abatement contractor estimated that a thorough inspection for this project would cost \$5,900.00. Assuming asbestos was present, \$5,900.00 would not have covered the entire bill from the abatement contractor. Removal costs would have increased the amount substantially. However, for purposes of this settlement, \$5,900.00 is being assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. It is unknown how much, if any, asbestos was released into the environment during the demolition activities. However, as indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The integrity of the asbestos NESHAP program is threatened when all regulated asbestos containing material is not removed during an abatement project and left in a dry condition following the removal project. Asbestos is known to cause cancer and is a hazardous air pollutant. Therefore, \$1,000.00 is being assessed for this factor.

c. Culpability. Johnson County has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to the rules of the DNR. Therefore, \$500.00 is being assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

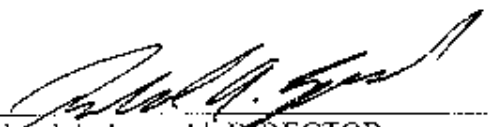
This administrative consent order is entered into knowingly by and with the consent of Johnson County. For that reason, Johnson County waives the right to appeal this administrative consent order or any part thereof.

## VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order

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constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
Richard A. Leopold, DIRECTOR  
Iowa Department of Natural Resources

Dated this 9 day of  
Jan, 2008.

  
For JOINSON COUNTY

Dated this 22<sup>nd</sup> day of  
November, 2007.

Anne Preziosi; Marion Burnside; Field Office 6; Dennis Ostwinkle; VII.C.4